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May 20, 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: 

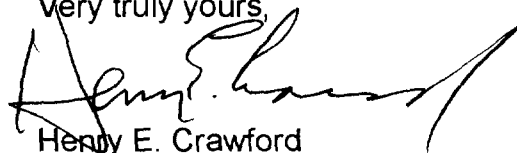
In the Matter of Implementation of Section 309(j) of the Communications Act Competitive Bidding PP Docket No.: 93-253
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Dear Mr. Caton:

Transmitted herewith on behalf of Millin Publications, Inc. are an original and nine (9) copies of its "Petition for Reconsideration" as directed to the Commission.

Should any additional information be required, please contact this office.

Very truly yours,



Henry E. Crawford  
Counsel for  
Millin Publications, Inc.

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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
 WASHINGTON, D.C.

MAY 20 1994  
 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act	)	
Competitive Bidding	)	
	)	
	)	

To: The Commission

**PETITION FOR RECONSIDERATION**

Millin Publications, Inc. ("Millin"), by counsel, pursuant to 47 CFR § 1.106 respectfully submits its *Petition for Reconsideration* in response to the *Second Report and Order in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253* ("Second Report and Order") released by the Commission on April 20, 1994. In support thereof, the following is stated:

**I. INTRODUCTION**

1. The Commission's decision to classify Personal Communications Systems ("PCS") as a subscription service will mean that this part of the information superhighway will be a toll road for consumers rather than an open, universally free service as proposed by Millin in its Comments. Nevertheless, despite the consequences of this decision, the Commission, in the Second Report and Order, based its finding of subscription service on almost no empirical data and no well articulated conceptual argument by the other commenters. Therefore, this aspect of the Second Report and Order, which will

define the economic model of the entire industry for both consumers and operators lacks a reasoned basis.

## **II. ARGUMENT**

### **A. There is a Lack of Evidence Concerning an Appropriate Economic Model for PCS**

2. No commenter, except Millin, seriously argued for a specific economic model for PCS. Nevertheless, Congress mandated that the Commission make an initial finding that any new service be primarily a subscription service before subjecting that service to allocation by auction. Indeed, the Commission requested specific comment on the economic model for PCS since its assumption of subscription service was based only on the general nature of comments and the identity of the commenters up to that point.<sup>1</sup> However, there was no comment on the appropriate economic model for PCS since, in truth, the technology has not been deployed in real market conditions and the technical range of PCS possibilities is so broad that virtually any economic model could be imposed on PCS.<sup>2</sup>

3. It is true that the "vast majority of commenters" either wished for PCS to be treated as a subscription service or "simply assumed that the applications will be auctioned."<sup>3</sup> However, that cannot overcome the lack of record evidence for casting PCS as a subscription service. The Commission also points to "myriad *ex parte* presentations" apparently addressing this issue.<sup>4</sup>

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<sup>1</sup> Notice of Proposed Rule Making, October 12, 1993, p. 39, ¶116.

<sup>2</sup> As stated by Stan Bensen, Charles River Associates: "...these services are not well-defined, no one including the Commission can know with any particularity precisely -- the precise market structure and the precise identity of the firms that are likely to be best able to serve consumer needs." Federal Communications Commission *On Banc* Meeting on PCS, Monday, April 11, 1994, p. 140.

<sup>3</sup> Second Report and Order, p. 23, ¶ 54.

<sup>4</sup> Second Report and Order, p. 23, ¶ 54.

However, neither Millin nor the public at large knows the nature of such *ex parte* presentations. Indeed, as Advanced Cordless Technologies, Inc. has well documented elsewhere, the blitzkrieg of *ex parte* lobbying contacts made in this proceeding have been, for the most part, “form” written reports essentially silent on substance.<sup>5</sup> To have so important an issue decided by off-the-record contacts and mere assumptions does not serve the consuming public who will have to pay for PCS subscriptions unless the Commission follows Millin’s approach and allows PCS to be made available as a universally free advertiser and vender supported service as is present day broadcast technology.

4. There is nothing inherent in broadcast technologies that make them “non-subscription” services. Were radio and television now just emerging, they could easily be understood and implemented as services for which subscribers would pay a monthly subscription fee to the broadcast licensee. Fortunately for the American consumer and American industry, the early entrepreneurs of radio built that infrastructure on strong commercial forces that fostered a wide diversity of programming and encouraged the maximum audience. The result was a universally free service that has brought untold benefits to the American public.

5. PCS too could enjoy that wide diversity of programming and audience reach. However, Millin submits that those goals can only be achieved in a non-subscription environment. By shifting the economic base of PCS to advertisers and information suppliers, instead of the licensee, the public will receive the direct benefit of competition between these software suppliers rather than having each licensee compete for the finite pool of paying subscribers. As

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<sup>5</sup> See, Petition for Reconsideration by Advanced Cordless Technologies, Inc., March 7, 1994, in GEN Docket No. 90-314, RM-7140, RM-7175, RM-7618, pp. 23-27.

outlined by Millin in its comments, the PCS licensee in a non-subscription environment would take its revenue from advertisers and vendors of products who in turn would be compensated by purchases made by the consumer. In non-subscription PCS, the licensee, like the broadcast licensee, would be a conduit for programming or software applications rather than a static toll collector. Non-subscription PCS fosters a wide diversity of competing software, while subscription PCS must always remain a creature of how many subscribers can be signed up at the highest possible rate to afford the maximum profit.

6. This subscription vs. non-subscription issue is somewhat similar to what has emerged in the area of on-line computer services. The most powerful and wide-ranging computer network in the world is the non-subscription Internet. The very lack of a ridged economic structure has created a diverse depository of useful and educational software and information. To date, the world wide Internet has created a larger base of users than any of the subscription based networks. Similarly, Millin submits, PCS can only flower as a technology for the average consumer as a non-subscription service.

7. Besides the identities of the parties and the *ex parte* contacts, the Commission's final basis for its finding lies with experimental PCS applications.<sup>6</sup> The argument here is that the experimental licensees have charged subscribers either "...for airtime or for the lease of subscriber equipment or both." That data, however, reflects only the very experimental nature of such efforts. Neither equipment leasing or airtime charges are necessarily desirable pricing schemes. Hopefully, wide-spread PCS use will bring down the cost of equipment to the point where it will not have to be leased. Furthermore, keeping in mind the

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<sup>6</sup> Second Report and Order, p. 24, ¶ 56.

broadcast model, it would be unthinkable for the Commission to impose an economic regulatory system on television viewers that would charge them for leasing television sets, let alone for "airtime" spent in watching shows. In a non-subscription model, "airtime" can be compensated either by the advertiser who enjoys greater sales because consumers are able to purchase its goods over a PCS data network, or by a third-party information vendor whose database is carried on the network. Therefore, there is nothing either logically or empirically inherent in the work of the experimental licensees that provides a basis for regulating PCS as a costly subscription service.

**B. The Record Evidence Demonstrates That Subscription PCS Will Sharply Limit the Benefits of This New Technology**

8. It is well established on this record that subscription based PCS will be of limited benefit to all but the large, dominant telecommunications companies.<sup>7</sup> Indeed, while existing market research reveals consumer demand for PCS, that demand has also been shown to wilt in the face of the subscription charges that are likely to be levied by the large carriers.<sup>8</sup> Consequently, not only is the record barren of evidence to support subscription based PCS, the record evidence shows subscription PCS to lack benefits that even come close to the cost of subscription PCS to the designated entries and consumers.

9. The effects of a subscription based model for PCS is well established on the record. As David Kerr of BIS Strategic Decisions observed:

...first generation PCS will be dominated by the winners of the MTA licenses....the most economical segments to serve will be the business-wide area

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<sup>7</sup> The handicaps faced by the designated have been clearly articulated by Commissioner Andrew C. Barrett. See, Comments of Millin Publications, pp. 11-12, ¶¶ 23, n 7.

<sup>8</sup> See testimony of Mark Roberts, Alex, Brown & Sons, Federal Communications Commission *On Banc* Meeting on PCS, Monday, April 11, 1994, p. 313.

segment, typically classified as mobile professional, rather than trying to serve a mass market with revenue expectations, monthly revenue expectations of \$25 to \$30.

Federal Communications Commission *On Banc* Meeting on PCS, Monday, April 11, 1994, p. 33.<sup>9</sup> Therefore, subscription based PCS is likely to continue the unfortunate experience of subscription based cellular service which the Commission has described as involving "millions of subscribers...[who] have been foreclosed from participating in the wireless revolution of the past decade."<sup>10</sup>

10. Non-subscription based PCS, on the other hand, like non-subscription based broadcasting will rely on the industrial engine of American commerce for its revenue and the result will be the same free universal service aimed at attracting the largest audience. Moreover, by employing a marketing engine, with advertisers and vendors competing on the basis of applications, non-subscription PCS will result in the same wide diversity of software that is present in the broadcast medium. Subscription based PCS, however, like subscription based cellular has only subscription fees and economies of scale as tools to compete with. The result is essentially the same service being

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<sup>9</sup> It has also been said that "...the nature of PCS will tend to favor large dominant communication service providers because first of all PCS networks are going to be very capital intensive, very high fixed cost networks that require heavy investment well in advance of any revenues or potential investment returns." Federal Communications Commission *On Banc* Meeting on PCS, Monday, April 11, 1994, p. 248.

<sup>10</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, ("PCS Order") FCC 93-451, released October 22, 1993, p. 10, ¶ 15.

provided by each operator.<sup>11</sup> However, economists favor the differentiated product offerings that will arise in a non-subscription PCS environment.<sup>12</sup>

11. Minority, female and small business participation in PCS will also be hindered due to the subscription service model. As Millin noted in its Comments, the number of subscribers is a finite quantity and deriving revenue from a subscription service will leave only the dominant telecommunications companies.<sup>13</sup> The record supports this analysis:

What we envisage in the current format would be large players, primarily the regional Bell operating companies and the Inter-Exchange carriers, dominating the MTA license awards. The cellular mobile companies, inevitably, will win the 10 megahertz allocations. With extreme difficulty, in our opinion, for the small minorities and designated entities in achieving funding.

David Kerr of BIS Strategic Decisions, Federal Communications Commission *On Banc Meeting on PCS*, Monday, April 11, 1994, p. 33.

12. In sum, the record contains no evidence that subscription based PCS will be worth the cost to both designated entities and consumers. Casting this precious resource as little more than a swollen clone of the cellular service will not serve the public interest. Moreover, the greater range of computer based applications employing both voice and data will be lost. As Dr. David C. Nagel of Apple Computer noted:

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<sup>11</sup> As noted by Paul Rissman of Alliance Capital: "So I think the competitive dynamics of that is going on are driving everybody to the same conclusion. And that conclusion is if we don't offer the same services that our competitor offers we will lose." Federal Communications Commission *On Banc Meeting on PCS*, Monday, April 11, 1994, p. 306.

<sup>12</sup> See Federal Communications Commission *On Banc Meeting on PCS*, Monday, April 11, 1994, p. 138.

<sup>13</sup> Comments of Millin Publications, Inc., p. 11, ¶ 23.



...[voice PCS] provide[s] few new benefits to the public other than convenience. In contrast Data-PCS is not a modification of an existing service. Data-PCS, for example, would be the primary, and in some cases the only practical means of providing Internet access throughout schools; the only practical means to enable doctors to connect to medical resources in hospitals, to allow persons attending meetings to benefit from a copious and immediate exchange of information.

Federal Communications Commission *On Banc* Meeting on PCS, Tuesday, April 12, 1994, p. 47. Millin submits that non-subscription based PCS, like non-subscription broadcasting will bring about a wider range of software and programming. Subscription based PCS, on the other hand, will, by its own economic nature, become a homogenous single service system not unlike the existing cellular service. In sum, the record evidence fails to support subscription PCS over non-subscription PCS.

### **III. CONCLUSION**

13. The present quest for allocation by auction departs drastically from the tenants of Ashbacker Radio Corp. v. FCC, 326 US 327 (1945). In its simplest form the change is from a system based on merit to one based on money. However, such a departure cannot be made where, as here, there is no logical or empirical basis for finding PCS to be a "subscription" as opposed to "non-subscription" service and certainly not on the meager record developed in this case. Nevertheless, the stakes are high. If PCS is ultimately deemed a subscription service, the winners will be the dominant communications companies who alone possesses the ready cash. The losers in this proceeding will be the small, minority and female owned businesses that will be unable to compete in a capital intensive subscription based service. Of course, the

ultimate loser will be the American consumer who will have to pay a subscription fee for a service that lacks the dynamism and diversity of a non-subscription based PCS.

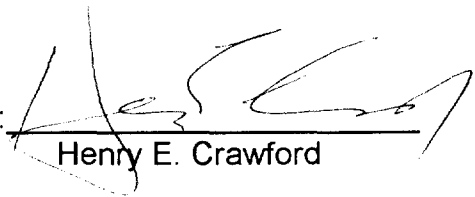
WHEREFORE, Millin Publications, Inc. respectfully requests that the Commission reverse that part of its decision in the *Second Report and Order in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253* that finds PCS to be a subscription service and seek further comment and conduct further inquiry concerning an appropriate non-subscription based PCS.

May 20, 1994

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Respectfully Submitted,


Millin Publications, Inc.

By:   
Henry E. Crawford

Its Attorney

CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing  
Petition for Reconsideration have been served by United States mail, postage  
prepaid this 20th day of May, 1994 upon all of the parties to the proceeding  
below.

  
Henry E. Crawford